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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,006	05/22/2000	Yoshitaka Takahashi	2271/46440-B	2446

7590 11/27/2006

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EXAMINER

CHU, KIM KWOK

ART UNIT PAPER NUMBER

2627

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/577,006

Applicant(s)

TAKAHASHI ET AL.

Examiner

Kim-Kwok CHU

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 14, 43 and 53-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43 is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 53-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 08/895,511.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Remarks***

1. Applicant's Remarks filed on September 1, 2006 have been fully considered:

Pursuant to 37 CFR 1.173(b), Applicant correctly amends the present reissue application.

Pursuant to 37 CFR 1.173(c), the Remarks explains the support in the disclosure of the patent for the amendment.

The newly amended Claims 13, 14 and 53-60 are being rejected under the judicially created doctrine of obviousness-type double patenting.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 13, 14 and 53-60 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 5,694,385.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

(a) with respect to the present amended claim 13, the '385 patent's claims 1 and 2 have every limitation of the present claim 1. However, the claimed uniaxial crystal plate "having a discontinuous surface" is an obvious variation of the Claim 1 of the '385 patent because a crystal optical component such as the claimed uniaxial crystal has more than one surface and therefore the surfaces are considered not continuous.

(b) with respect to the present claim 14, the '385 patent's claim 3 has every limitation of the present claim 14.

(c) with respect to the present claim 53, the '385 patent's claim 1 has every limitation of the present claim 53.

(d) with respect to the present Claim 54, the claimed feature "wherein the incident plain surface of the uniaxial crystal plate is not perpendicular to the optical axis" is an obvious variation of the Claim 1 of the '385 patent because the claimed uniaxial crystal plate has a discontinuous surface which can be considered as a surface positioned not perpendicular to the optical axis.

(e) with respect to the present claim 55, the '385 patent's claim 2 has every limitation of the present claim 55.

(f) with respect to the present Claim 56, the claimed feature "wherein the unitary optical pickup portion is accommodated in an actuator movable portion which can be moved both in a tracking direction and in a focusing direction" is an obvious variation of the Claim 3 of the '385 patent because the optical pickup is inherently moved both in a tracking and in a focusing direction so that the claimed focused light flux can be emitted to and received from the optical recording medium.

(g) With respect to the present Claim 57, the claimed feature "wherein the semiconductor laser, the light-receiving element, the uniaxial crystal plate and the objective lens are

accommodated in an actuator movable portion which can be moved both in a tracking direction and in a focusing direction" is an obvious variation of the Claim 3 of the '385 patent where all the optical elements are integrated in one single package.

(h) with respect to the present claim 58, the '385 patent's claim 1 has every limitation of the present claim 58.

(i) with respect to the present claim 59, the '385 patent's claim 1 has every limitation of the present claim 59.

(j) with respect to the present claim 60, the '385 patent's claim 2 has every limitation of the present claim 60.

***Allowable Subject Matter***

4. Claim 43 is allowable over the prior art of record.

5. The following is an Examiner's Statement of Reasons for Allowance:

As in claim 43, the prior art of record fails to teach or fairly suggest an optical pickup having two pieces of prism consisting of same sort of uniaxial crystal respectively having optical axes intersecting perpendicularly to each other are employed as a flux separating element, such that when a refractive index for ordinary light rays of the prism  $\eta_o$  is larger than a refractive index for extraordinary light rays  $\eta_e$ , an incident angle of the ordinary light rays transmitted through the first prism to the second prism is  $\delta$ , and a counterclockwise angle from the optical axis of the ordinary light rays is in a plus (+) direction when the value of  $\delta$  becomes larger than zero, and such that when  $\eta_o$  is larger than  $\eta_e$ , an incident angle of the extraordinary light rays transmitted through the first prism to the second prism is  $\delta$ , and a counterclockwise angle from the optical axis of the extraordinary light rays is in a plus (+) direction when the value of  $\delta$  becomes smaller than zero ( $\delta < 0$ ).

The features indicated above, in combination with the other elements of the claims, are not anticipated by, nor made obvious over, the prior art of record.


6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kim CHU whose telephone number is (571) 272-7585 between 9:30 am to 6:00 pm, Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea Wellington, can be reached on (571) 272-4483.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished application is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9191 (toll free).

Kim-Kwok CHU

 11/15/2006  
Examiner AU2627  
November 15, 2006  
(571) 272-7585

  
ANDREA WELLINGTON  
SUPERVISORY PATENT EXAMINER